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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,739	09/08/2003	Robert P. Micciche	460.1888USV	8934

7590 08/23/2004

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EXAMINER

MILLER, WILLIAM L

ART UNIT PAPER NUMBER

3677

DATE MAILED: 08/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/657,739

Applicant(s)

MICCICHE ET AL.

Examiner

William L. Miller

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>02202004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Priority

1. Parent application 09/501,542 has become a patent, and thus the expression “now Patent No. 6,715,772” should follow the filing date of the parent application in the first sentence of the specification.

Claim Objections

2. Claims 12 and 16 are objected to because of the following informalities: the phrase “according to claim 1” must be replaced with the gasket structure recited in canceled claim 1. Appropriate correction is required. (Note: For purposes of examination, claims 12 and 16 are being viewed as including the gasket structure recited in canceled claim 1.)

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 12-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art (hereinafter “APA”) in view of Barna et al. (US#5492336).

5. The APA (see paragraph “2” of the “Description of the Prior Art” section of the specification of the instant application) discloses a method of venting gas from a positive pressure generating system in a package, and a method of sealing an opening in a package, comprising securing a closure fitting, namely a trigger spray or finger pump, having a gasket about an opening of the package wherein the gasket forms a seal that is capable of venting gases

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while preventing liquid from leaking therefrom. The gasket comprises a liquid impermeable core having inherent opposing first and second sides, and a single (or first) outer layer connected to one of the sides of the core wherein the outer layer is made of a gas permeable membrane enabling gas to move out of the package (inherently including the tangential direction).

6. Regarding claims 12 and 16, the APA fails to disclose the gasket including a second outer layer connected to the other side of the core wherein the second outer is also made of a gas permeable membrane as claimed by the applicant. However, Barna discloses a gasket 10 comprising a liquid impermeable core 12 having opposing first and second sides, and first and second outer layers 14 connected to respective core sides wherein the outer layers are made of a gas permeable membrane. (Note: Barna discloses the materials used for the core and first and second outer layers are prepared by the process taught by Gore (US#3953566) wherein Gore teaches the materials may transmit gases while blocking liquids (col. 5, lines 20-30)). Barna discloses the gasket provides an effective long-term seal under pressure, while being durable, chemical and thermal resistant, non-contaminating, and easy to install (col. 3, lines 15-32). Therefore, as taught by Barna, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the APA by utilizing a gasket having a liquid impermeable core and first and second outer layers connected to respective core sides wherein the outer layers are each made of a gas permeable membrane to provide an effective long-term seal under pressure, which is durable, chemical and thermal resistant, non-contaminating, and easy to install.

Conclusion

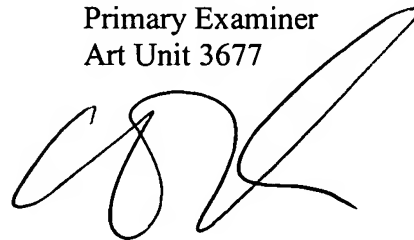
7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William L. Miller whose telephone number is 703 305 3978. The examiner can normally be reached on Tuesday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on 703 306 4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

William L. Miller
Primary Examiner
Art Unit 3677

A handwritten signature in black ink, appearing to be 'WLM', written over the printed name of the examiner.

WLM
08-18-2004